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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/683,985

10/10/2003

Kemal Guler

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3445

22879 7590 03/23/2007  
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EXAMINER

LEVINE, ADAM L

ART UNIT

PAPER NUMBER

3625

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/23/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/683,985

Applicant(s)

GULER ET AL.

Examiner

Adam Levine

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10 October 2003</u> .                                         | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Specification*

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### *Claim Objections*

Claim 11 is objected to because of the following informalities: the wording of the claim makes it difficult to determine the exact nature of the invention. The claim should be reworded as follows, for example: A computer readable medium containing executable instructions ~~that are executable by a computer system and that when executed by a computer system~~ the instructions implement a method comprising.... In addition, in line 5 of the claim "rules" should be "rule." Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. **Claims 1-12,15,17, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: the steps required to customize the feedback rules and conduct the auction using the feedback rules or to indicate how the feedback rules are customized and the auction conducted using the feedback rules.

The term "substantially" in claims 1-2,5, and 7 is a relative term which renders the claims indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

The term "future use" in claim 1 is a relative term that renders the claim indefinite. The term "future use" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claims 1-10 provide for the use of feedback rules, but, since the claims do not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that they fail to point out what is included or excluded by the claim language. These claims are omnibus type claims.

The terms "X" and "K" in claims 11-12, 17, and 22 are relative terms that render the claims indefinite. The terms "X" and "K" are not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree or relationships, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 15 is generally narrative and indefinite, failing to conform with current U.S. practice. The phrase, "selecting the feedback rule by the instructions based on auction details provided by the end-user initiating the online auction," is not intelligible. For purposes of examination this is interpreted as referring to a limitation that selects feedback rules based on feedback rules used in other auctions that are implemented using otherwise similar auction rules.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**2. Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Abeshouse (US Pub. No. 2002/0099643).**

Abeshouse teaches all the limitations of claims 1-24. For example, Abeshouse discloses a method and computer system for allowing the user to create an online auction, conduct an auction, accept bids from participants, and determine rules for providing or withholding information regarding the auction from the bidders (see at least abstract, figs.2,5,9). Abeshouse further discloses:

- controlling feedback by customizing feedback rules: for an online auction substantially no earlier than entry of auction rules into an auction program by an end-user, contemporaneously with entering auction rules, at least one feedback rule from the group: feedback type rules, feedback timing rules, and feedback content rules (see at least figs.5-16; page 7 ¶¶0080-0083, page 10 ¶0101, page 20 ¶0172); selecting feedback rules by the end-user from a pre-determined set of feedback rules (see at least page 7 ¶¶0080-0083, page 8 ¶0089, page 10 ¶0101, page 20 ¶¶0172-0174); customizing feedback rules by the end-user after the online auction has begun, changing previously customized feedback rules by the

end-user after the auction has begun, allowing the end user to change selection of feedback rules for the online auction during the online auction (see at least page 7 ¶¶0080-0083); customizing feedback rules by the auction program based on the auction rules entered by the end-user (see at least figs.2,5,9-10, page 7 ¶¶0080-0083, page 8 ¶0089, page 10 ¶0101, page 20 ¶¶0172-0174); comparing the auction rules entered by the end-user to previously stored auction rules to ascertain similarities and selecting feedback rules by the auction program for the online auction based on similarities of the auction rules for the online auction with the previously stored auction rules, comparing an auction type entered by the end-user to previously stored auction types, selecting feedback rules by the auction program based on the feedback rules used for previously stored auction types, selecting the feedback rule by the instructions based on auction details provided by the end-user initiating the online auction (see at least abstract, figs.2,4; page 4 ¶0059, page 5 ¶¶0068-0069, page 6 ¶0073, page 7 ¶0083, page 13 ¶0128. Please note: in addition, it is examiner's position that this feature would not distinguish because many auction types include feedback rules as part of the standard auction format).

- storing the customized feedback rules: for future use by the auction program (see at least abstract, page 4 ¶¶0056,0059,0062; page 5 ¶¶0064,0070. Please note: this feature is inherent in any computerized system as the rules must be stored in memory in some form in order to be put into use.);

- conducting the online auction by the auction program: using the feedback rules (see at least abstract, figs.1-16, page 1 ¶0004, page 2 ¶¶0023,0026); selecting an event tracked by the online auction, wherein occurrence of the event triggers a change of feedback rules during the online auction (see at least abstract, page 7 ¶¶0080-0083. Please note: the bidder meeting a condition is an example of an event tracked by the auction warranting a change of rules, i.e., allowing the bidder to receive feedback data).
- a computer readable medium: containing instructions that are executable by a computer system (see at least abstract, page 3 ¶0031).
- feedback rule is one of the group consisting of: anonymous feedback, personalized feedback, conditional feedback, timing of feedback, periodic feedback, continuous feedback, a combination of leading K bids and rank among leading X bids, and a combination of leading K bids and whether among leading X bids, further allowing the end-user to select at least one feedback rule from the group: no feedback, full disclosure, leading K bids, where K is a number equal to or less than a number of bidders in the auction, rank among leading X bids, where X is a number equal to or less than a number of bidders in the auction, whether among leading X bids, a combination of leading K bids and rank among leading X bids, and a combination of leading K bids and whether among leading X bids (see at least see at least figs.5-16; page 7 ¶¶0080-0083, page 10 ¶0101, page 20 ¶0172. Please note: regarding claims 20 and 21, at least anonymous, personalized, and conditional feedback are disclosed in addition to others).



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- a processor: a network interface coupled to said processor, an auction program operable to provide data to client computers over the network interface for generation of an auction interface (see at least abstract, figs.1,3-4,6-8,11-16; page 2 ¶¶0026-0027, page 3 ¶¶0031,0041; pages 3-4 ¶¶0054-0059).

Pertaining to computer readable medium claims 11-16

Rejection of claims 11-16 is based on the same rationale as noted above.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Levine whose telephone number is 571.272.8122.


The examiner can normally be reached on M-F, 8:30-5:00 Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571.272.6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Adam Levine  
Patent Examiner  
March 19, 2007



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